

**TAB 23**

Sykora, Robert C.

December 4, 2008

Atlanta, GA

1

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL ) MDL No. 1456  
INDUSTRY AVERAGE WHOLESALE ) Civil Action No.  
PRICE LITIGATION ) 01-12257-PBS

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THIS DOCUMENT RELATES TO: )

United States of America, )

et al. v. Ven-a-Care of the )

Florida Keys, Inc. v. )

Boehringer Ingelheim Corp., )

et al., CIVIL ACTION NO. )

07-10248-PBS )

- - -

Videotaped deposition of ROBERT C.

SYKORA, taken pursuant to the stipulations  
agreed to herein, before Suzanne Beasley,  
Registered Professional Reporter and Notary  
Public, at 1031 Virginia Avenue, Atlanta,  
Georgia, on the 4th day of December, 2008,  
commencing at the hour of 10:38 a.m.

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20 (Pages 74 to 77)

<p style="text-align: right;">74</p> <p>1 lessened?</p> <p>2 <b>A. I don't know if it was lessened, but it</b></p> <p>3 <b>wasn't maximized.</b></p> <p>4 Q. And do you have any understanding what</p> <p>5 she meant by the latter part of that statement,</p> <p>6 "it can be difficult to explain when questioned"?</p> <p>7 <b>A. I do not.</b></p> <p>8 Q. If -- why would it be difficult to</p> <p>9 explain an AWP increase by just simply stating</p> <p>10 the truth, which is it was raised to compete with</p> <p>11 other generics?</p> <p>12 MR. KAVANAUGH: Objection to form.</p> <p>13 THE WITNESS: Can you repeat the</p> <p>14 question?</p> <p>15 BY MR. ANDERSON:</p> <p>16 Q. Would it be difficult to explain AWP</p> <p>17 increases by simply stating the truth, which is</p> <p>18 they were done to compete with generic</p> <p>19 competitors' AWP's?</p> <p>20 MR. KAVANAUGH: Objection to form.</p> <p>21 THE WITNESS: In my opinion, no.</p> <p>22 BY MR. ANDERSON:</p>	<p style="text-align: right;">76</p> <p>1 sell drugs may or may not be illegal?</p> <p>2 MR. KAVANAUGH: Objection to form. It</p> <p>3 assumes facts not in evidence. It's an improper</p> <p>4 hypothetical and lacks foundation.</p> <p>5 You can answer.</p> <p>6 THE WITNESS: If there was a law that</p> <p>7 said you couldn't do it, I personally wouldn't do</p> <p>8 it.</p> <p>9 BY MR. ANDERSON:</p> <p>10 Q. Do you agree, Mr. Sykora, that Ms.</p> <p>11 Waterer was primarily looking to you to provide</p> <p>12 the support from the customers as to the</p> <p>13 rationale for increasing the AWP's?</p> <p>14 <b>A. She was looking for information from</b></p> <p>15 <b>me, yes.</b></p> <p>16 Q. And the reason she was looking for that</p> <p>17 information from you was that you were ultimately</p> <p>18 the boss of all the national account managers?</p> <p>19 <b>A. I was the boss of the people who would</b></p> <p>20 <b>gather the information. Marketing determined</b></p> <p>21 <b>where the AWP would be. Sales just helped gather</b></p> <p>22 <b>information in the field so they could make</b></p>
<p style="text-align: right;">75</p> <p>1 Q. Why not?</p> <p>2 <b>A. Because it's the truth.</b></p> <p>3 Q. Is there anything inappropriate about</p> <p>4 raising AWP's to compete with other generic drugs'</p> <p>5 AWP's?</p> <p>6 <b>A. In my opinion, no.</b></p> <p>7 Q. Do you have any type of background in</p> <p>8 Medicare and Medicaid fraud and abuse laws?</p> <p>9 <b>A. I do not.</b></p> <p>10 Q. Have you ever considered Medicare and</p> <p>11 Medicaid fraud and abuse laws in the context of</p> <p>12 AWP increases?</p> <p>13 <b>A. I have not.</b></p> <p>14 Q. Are you aware of any Office of</p> <p>15 Inspector General guidelines about AWP price</p> <p>16 setting?</p> <p>17 MR. KAVANAUGH: Objection to form.</p> <p>18 THE WITNESS: I am not.</p> <p>19 BY MR. ANDERSON:</p> <p>20 Q. Would you agree that if you had</p> <p>21 familiarity with those laws, it may impact</p> <p>22 whether or not the raising of AWP's to compete and</p>	<p style="text-align: right;">77</p> <p>1 <b>whatever decision was necessary at the end of the</b></p> <p>2 <b>day.</b></p> <p>3 Q. Do you have any understanding that</p> <p>4 pricing actions by the marketing department,</p> <p>5 including Ms. Waterer or Ms. Paoletti, were</p> <p>6 unauthorized by --</p> <p>7 MR. KAVANAUGH: Objection to form.</p> <p>8 BY MR. ANDERSON:</p> <p>9 Q. -- by Roxane?</p> <p>10 <b>A. I do not have any knowledge of that.</b></p> <p>11 Q. Do you ever recall Ms. Waterer or Ms.</p> <p>12 Paoletti or Mr. Russillo, or anyone else, for</p> <p>13 that matter, being disciplined for raising AWP's</p> <p>14 without authority?</p> <p>15 <b>A. I'm not aware of that.</b></p> <p>16 <b>(Exhibit Sykora 006 was marked for</b></p> <p>17 <b>identification.)</b></p> <p>18 BY MR. ANDERSON:</p> <p>19 Q. If you could, take a look at what's</p> <p>20 been marked as deposition Exhibit 006.</p> <p>21 <b>A. Okay.</b></p> <p>22 Q. Have you finished your review of</p>

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<p style="text-align: right;">78</p> <p>1 Exhibit 006?</p> <p>2 <b>A. I have.</b></p> <p>3 Q. Is this the document you saw yesterday</p> <p>4 with Mr. Kavanaugh?</p> <p>5 <b>A. It is.</b></p> <p>6 Q. And this is an e-mail exchange between</p> <p>7 you, Ms. Waterer, and then there's copies to Mr.</p> <p>8 Feldman and Mr. Russillo, correct?</p> <p>9 <b>A. Correct.</b></p> <p>10 Q. And it's dated July 7th, which is just</p> <p>11 a couple of days after the July 5th conversation</p> <p>12 we just saw, correct?</p> <p>13 <b>A. Correct.</b></p> <p>14 Q. All right. And I'm looking now, sir,</p> <p>15 at your message dated July 7th at 2:25 p.m. to</p> <p>16 Ms. Waterer, and you copy Mr. Feldman and Mr.</p> <p>17 Russillo. Specifically I'm looking down at the</p> <p>18 second paragraph. Do you agree that paragraph</p> <p>19 pertains to AWP's on Roxane products?</p> <p>20 <b>A. It does.</b></p> <p>21 Q. And I'll read for the benefit of the</p> <p>22 jury. Quote, I feel that you've thrown Furo onto</p>	<p style="text-align: right;">80</p> <p>1 Q. Continuing on, I'm picking up at the</p> <p>2 next full sentence. Quote, I realize there is</p> <p>3 political pressure on AWP currently, but it</p> <p>4 should not run our business.</p> <p>5 Did I read that correctly?</p> <p>6 <b>A. Correct.</b></p> <p>7 Q. What political pressure were you aware</p> <p>8 of about AWP?</p> <p>9 <b>A. I believe they're talking about the</b></p> <p>10 <b>pressure from Boehringer Ingelheim.</b></p> <p>11 Q. Political pressure being pressure from</p> <p>12 BI down to Roxane?</p> <p>13 <b>A. Correct.</b></p> <p>14 Q. What was that pressure?</p> <p>15 <b>A. We were in that transition period. I</b></p> <p>16 <b>think it was just not too long before that that</b></p> <p>17 <b>they gave us our severance packages, and so</b></p> <p>18 <b>everybody was kind of -- at Roxane was a little</b></p> <p>19 <b>perturbed. They weren't great severance</b></p> <p>20 <b>packages. Most of us were not offered jobs.</b></p> <p>21 <b>Even myself, I was ultimately offered a</b></p> <p>22 <b>job, but not until three months later. And so at</b></p>
<p style="text-align: right;">79</p> <p>1 my lap when the entire generic line AWP's need to</p> <p>2 be reviewed and adjusted. The most consistent</p> <p>3 complaint I hear from retail customers is our</p> <p>4 AWP's.</p> <p>5 Did I read that correctly?</p> <p>6 <b>A. Correct.</b></p> <p>7 Q. Is that a true statement?</p> <p>8 <b>A. For that time, it might have been, yes.</b></p> <p>9 Q. All right. Do you have any reason to</p> <p>10 believe that that statement as you wrote it in</p> <p>11 July of 2000 was wrong?</p> <p>12 <b>A. No.</b></p> <p>13 Q. Does that statement refresh your memory</p> <p>14 that in fact, customers were complaining to you</p> <p>15 and your sales force about AWP's being too low on</p> <p>16 Roxane products?</p> <p>17 <b>A. They were too low, yes. Or the</b></p> <p>18 <b>customers were complaining they were too low,</b></p> <p>19 <b>yes.</b></p> <p>20 Q. And was that in your experience costing</p> <p>21 Roxane sales?</p> <p>22 <b>A. Probably, yes.</b></p>	<p style="text-align: right;">81</p> <p>1 <b>this stage of the game, as far as I knew, I was</b></p> <p>2 <b>getting what I thought was a substandard</b></p> <p>3 <b>severance package, and, you know, and no</b></p> <p>4 <b>opportunity for a -- you know, to further my</b></p> <p>5 <b>career, to live in Columbus, Ohio, which is where</b></p> <p>6 <b>I wanted to live at the time, so to tell you the</b></p> <p>7 <b>truth, I was mad and everybody else at the</b></p> <p>8 <b>facility was mad as well at BI.</b></p> <p>9 Q. How would the severance packages -- and</p> <p>10 I can appreciate that you may have been upset</p> <p>11 about the severance packages, but how did those</p> <p>12 connect with AWP's?</p> <p>13 <b>A. Just -- they didn't connect directly</b></p> <p>14 <b>with AWP's. It's just that there was a lot of --</b></p> <p>15 <b>there was angst, I guess, in the building between</b></p> <p>16 <b>BI and Roxane employees.</b></p> <p>17 Q. Yes, sir. I can understand that on the</p> <p>18 severance packages. But if you look at the</p> <p>19 sentence you wrote, you say there's political</p> <p>20 pressure on AWP currently, and if I'm</p> <p>21 understanding you correctly, you're saying you</p> <p>22 think that was political pressure coming from BI</p>

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<p style="text-align: right;">198</p> <p>1   Fauci. I'm an attorney with the United States 2   Attorney's Office in Boston, Massachusetts. I'm 3   one of the attorneys representing the United 4   States in this matter. I just have a few 5   followup questions following Mr. Anderson's 6   examination. 7       Starting in 1997, you came to work for 8   the Boehringer Ingelheim family of companies; is 9   that correct? 10       MR. KAVANAUGH: Objection to form. 11       THE WITNESS: I came to work 12   specifically for Roxane Laboratories, correct, 13   which is -- 14   BY MR. FAUCI: 15       Q. You worked specifically for Roxane 16   Laboratories? 17       A. I did. 18       Q. I believe you testified earlier that 19   you received your paycheck from a different 20   entity; is that correct? 21       A. That is correct. 22       Q. Which entity was that?</p>	<p style="text-align: right;">200</p> <p>1   BY MR. FAUCI: 2       Q. And can you tell me the same for Roxane 3   Laboratories around 1997? 4       A. There were two components. One was the 5   promotion of branded prescription items to 6   physicians, and the other was a generic 7   pharmaceutical business. 8       Q. And your position in 1997, what was 9   that? 10       A. Director of national accounts. 11       Q. What is a national account? 12       A. A national account, some organizations 13   might call it trade relations department, that 14   was responsible for interaction with large 15   customers, such as wholesalers as well as chain 16   drugstores, whether they warehouse products or 17   not. 18       Q. What's a wholesaler? 19       A. A wholesaler is a company that 20   distributes pharmaceuticals between the 21   manufacturer and the pharmacy. 22       Q. How many national account managers</p>
<p style="text-align: right;">199</p> <p>1       A. That was Boehringer Ingelheim. 2       Q. Was it just Boehringer Ingelheim -- was 3   it Boehringer Ingelheim Pharmaceuticals, 4   Incorporated? 5       A. That I do not know. 6       Q. But it was not Roxane Laboratories? 7       A. That is correct. 8       Q. And you just stated that your primary 9   job responsibility was on behalf of Roxane 10   Laboratories? 11       A. Correct. 12       Q. Was it also on behalf of Boehringer 13   Ingelheim? 14       A. There were times that Boehringer 15   Ingelheim would use the resources of the national 16   account group to launch new products. 17       Q. Can you tell me in general terms what 18   was the business of Boehringer Ingelheim around 19   the 1997 time frame? 20       MR. KAVANAUGH: Objection to form. 21       THE WITNESS: Promotion of branded 22   prescription items to physicians.</p>	<p style="text-align: right;">201</p> <p>1   reported to you? 2       A. I believe it was seven. 3       Q. Can you remember who they were? 4       A. Yeah, I could pull out that 5   organizational chart and look. 6       Q. Do you know if they were Roxane 7   employees or BI employees? 8       A. That I do not know. 9       Q. How often did these national account 10   managers report to you? Was it on a daily basis? 11   Was it weekly? 12       A. It's potential I could talk to any one 13   of them on any given day. 14       Q. Did they report to you in writing, 15   orally, or both? 16       A. Both. 17       Q. Tell me the day-to-day job function of 18   a national account manager. 19       A. Each one was responsible for in essence 20   a geography that contained national accounts, 21   either large wholesalers or large chain 22   pharmacies, and they would call on the corporate</p>

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